

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
ARS Broadcasting Corp.)	File No. 99CG160
WOOO)	
Shelbyville, Indiana)	NAL/Acct. No. X3232-001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 8, 2000

Released: February 8, 2000

By the Enforcement Bureau: Chicago Office

I. INTRODUCTION

1. This is a Notice of Apparent Liability for Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules (the "Rules"), 47 C.F.R. § 1.80, for willful and repeated failure to maintain effective locked fences around the base of each antenna having radio frequency potential at the base. We conclude that ARS Broadcasting Corp. is apparently liable for forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. ARS Broadcasting Corp. is the licensee of broadcast station WOOO, Shelbyville, Indiana.

3. On April 2, 1999, Agent James M. Roop from the Chicago Office visited radio station WOOO as a result of a complaint of improperly illuminated antenna tower structures. Inspection of the antenna tower structures found that the gate of the east¹ tower was not locked and the gate of the center tower was standing open. These issues were brought to the attention of general manager Mr. Tom Hession at the time of inspection during the evening of April 2, 1999.

4. On April 16, 1999, Agent Larry Hickman re-visited station WOOO and found the gate on the east tower to be unlocked.

5. An Official Notice was issued on April 22, 1999 citing non-compliance with 47 C.F.R. § 73.49.

6. ARS Broadcasting Corporation's response of April 30, 1999 attributed the non-compliance to a contractor.

¹The east tower was identified as the "south" tower in the April 22, 1999 notice of violation.

III. DISCUSSION

7. In accordance with 47 C.F.R. § 73.49, antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. ARS Broadcasting Corp. was in violation of 47 C.F.R. § 73.49 by not having the gates secured and locked. The violation was repeated. The gate on the east tower was found to be unlocked during the second tower inspection on April 16, 1999, after the conditions were brought to the attention of general manager Tom Hession on April 2, 1999.

8. Licensees bear the total responsibility for ensuring that the action of its employees or contractors do not result in non-compliance with the rules. The violations were willful.²

9. Pursuant to the Forfeiture Policy Statement, 12 FCC Rcd 17087 (1997), (“Policy Statement”), the base amount for this type of violation is seven thousand dollars (\$7,000). In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), that include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and statutory factors to the instant case, we believe that a monetary forfeiture in the amount of seven thousand dollars (\$7,000) is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80 of the Commission’s Rules, 47 C.F.R. § 1.80, that ARS Broadcasting Corp. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violating 47 C.F.R. § 73.49. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), and the guidelines enumerated in the Policy Statement.

11. IT IS FURTHER ORDERED THAT, pursuant to Sections 1.80(f)(3) and (h) of the Commission’s Rules, 47 C.F.R. § 1.80(f)(3) and (h), within thirty (30) days of the date of release of this NOTICE OF APPARENT LIABILITY, ARS Broadcasting Corp. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written response showing why the forfeiture should be reduced or not imposed. Any written response must include a detailed factual statement and supporting documentation.³ Forfeitures shall be paid by check, money order, or credit card, with the appropriate documentation, made payable to the Federal Communications Commission.⁴ The

²Section 312(f)(1), which also applies to Section 503(b), provides: [t]he term “willful,” when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

³Claims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three-year period.

⁴Requests for payment under installment plans should be mailed to: Chief, Credit and Debt Management Center, 445 12th St. SW, Washington, D.C., 20554. Payment of the forfeiture in installments may be considered

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remittance should be marked “NAL/Acct. No: X3232-001” and mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, IL 60673-7482

Send or mail any written responses regarding the reasons why the forfeiture should be reduced or not imposed to:⁵

Office of the Secretary
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554
ATTN: Enforcement Bureau
Technical and Public Safety Division

Any written response should be marked “NAL/Acct. No: X3232-001” and should focus on the mitigating factors outlined in the Policy Statement and Section 503 of the Act.

12. IT IS FURTHER ORDERED THAT this notice shall be sent, by certified mail, return receipt requested, to ARS Broadcasting Corp., P.O. Box 15435, Cincinnati, Ohio 45215.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
District Director
Chicago Office

as a separate matter in accordance with Section 1.1914 of the Commission’s Rules. Contact Chief, Credit and Debt Management Center at (202) 418-1995 for more information on payments by credit card.

⁵For example, you must support your claim that you qualify as a small business and may therefore be eligible for a potential reduction in the amount of this forfeiture pursuant to the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, 110 Stat. 858 (1996). If you have any questions on this subject, please contact the Commission’s Office of Communications Business Opportunities at (202) 418-0990.